

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc. )  
(VELCO), Vermont Transco, LLC, Green Mountain Power )  
Corporation (GMP), and Central Vermont Public Service )  
Corporation (CVPS) for a certificate of public good, )  
pursuant to 30 V.S.A. Section 248, authorizing VELCO to )  
construct the so-called Northwest Vermont Reliability )  
Project, said project to include: (1) upgrades at 12 existing )  
VELCO and GMP substations located in Charlotte, Essex, )  
Hartford, New Haven, North Ferrisburgh, Poultney, )  
Shelburne, South Burlington, Vergennes, West Rutland, )  
Williamstown, and Williston, Vermont; (2) the construction )  
of a new 345 kV transmission line from West Rutland to )  
New Haven; (3) the reconstruction of a portion of a 34.5 kV )  
and 46 kV transmission line from New Haven to South )  
Burlington; and (4) the reconductoring of a 115 kV )  
transmission line from Williamstown to Barre, Vermont )

Order entered: 6/25/2007

**ORDER RE DESIGN PLANS FOR THE 115 kV LINE**

On January 28, 2005, the Public Service Board ("Board") issued an Order and Certificate of Public Good approving, with modifications and conditions, the Northwest Vermont Reliability Project proposed by Vermont Electric Power Company, Inc. (now Vermont Transco, LLC) (collectively "VELCO") and Green Mountain Power Corporation ("GMP"). A condition of the January 28 Order and CPG stated:

Petitioners shall file, for the Board's approval, final construction plans for the 345 kV line, 115 kV line, and the substation upgrades, concurrent with plans for aesthetic and environmental mitigation, as required by the post-certification process described in the Order. Petitioners may commence construction only after receiving approval for such plans, and receipt of all necessary permits.<sup>1</sup>

Since the January 28 Order, VELCO has filed design plans for various portions of the project and received approval for some of those portions.

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1. Order of 1/28/05 at 226; CPG of 1/28/05 at 1.

In today's Order, the Public Service Board ("Board") addresses many of the remaining issues regarding VELCO's proposed final plans for the 115 kV line.

### **I. Partial Settlement**

On April 17, 2007, VELCO and the Department of Public Service ("Department") filed a partial settlement agreement purporting to resolve some of the areas of contention between the two parties regarding final design and landscape plans. The settlement addresses underground placement of distribution facilities, the addition of poles, and sharing the right-of-way with the railroad. The settlement further states that either VELCO or the Department may terminate the agreement if the Board does not approve the agreement without substantive changes or conditions.

On April 27, 2007, Meach Cove Real Estate Trust, the Towns of Ferrisburgh, Shelburne, and Charlotte, Addison County Regional Planning Commission, and the City of South Burlington (collectively "Opposing Parties") filed a letter objecting to the submission of the partial settlement agreement. The Opposing Parties contend that the agreement should be rejected as untimely, prejudicial, and irrelevant.

The Opposing Parties contend that any such agreement should have been filed at the time that briefs were submitted. Further, the Opposing Parties contend that the agreement "is merely a recitation by two of many parties to this Docket regarding their agreement with respect to certain aspects of the 115 kV line design." According to the Opposing Parties, the submission of the agreement serves only "to prejudice the outcome of this litigation by showcasing how VELCO and the DPS reject the shared concerns" of the Opposing Parties. The Opposing parties state that the agreement is irrelevant because it has no probative value. The Opposing Parties state that the agreement "purports to resolve substantive issues without the Board or the other parties having a full and fair opportunity to hear and assess the credibility of witnesses, conduct cross-examination, or present responsive evidence regarding the agreement." The Opposing Parties conclude by stating that, if the Board accepts the agreement, it should provide parties the opportunity to conduct discovery regarding the development of the agreement and the statements set forth within.

After consideration, we reject the partial settlement filed on April 17. The April 17 filing provides new plans, new information regarding cost, and generally provides for substantive changes to the project. However, the filing does not include any request by VELCO or the Department that we enter the new information into the record, or if we do, how we would provide parties a full and fair opportunity to respond to the new evidence. Since neither of the parties filing the agreement have requested that we enter the new evidence into the record, we do not do so. We note that, pursuant to its terms, the agreement terminates if the Board fails to approve it.

## **II. Compact Design Options**

### Findings

1. VELCO typically designs the clearance of its lines to National Engineering Safety Code ("NESC") plus five feet. In order to reduce pole heights, VELCO designed the clearance for the 115 kV line to NESC plus two (i.e., two feet above the NESC minimum clearance standard). Tr. 10/16/06 at 32-33 (Dunn).
2. Maintaining a buffer of two feet of clearance beyond NESC requirements allows flexibility in landowner activities, such as changing the grade of the land under a VELCO line, while allowing VELCO to meet the NESC clearance requirements. Tr. 10/16/06 at 95 (Wright).
3. Reducing the spacing between conductors from 15 feet would compromise VELCO's ability to meet applicable NESC standards and expose workers to unsafe conditions if hot line maintenance was performed. Tr. 10/16/06 at 47 (LaForest), 58-60, 74, 78-79 (Wright); exh. VT Transco-Post CPG-6, att. 1 at 3-4.
4. Decreasing the distance between conductors increases the chances that galloping (which occurs when one conductor drops its ice before the conductor above) could cause a flashover (a discharge between two conductors). Tr. 10/19/06 at 77 (Smith, Litkovitz); exh. VT-Transco-Post CPG-6; exh. VT Transco-Post CPG-27.
5. If hot wire maintenance was not able to be performed, VELCO would need to de-energize the line to perform maintenance, leading to customer outages during the maintenance period. Tr. 10/19/06 at 48 (Smith).

6. VELCO currently performs hot line maintenance on the majority of its lines. Tr. 10/16/06 at 80-81, 93 (LaForest).

7. Giving up the ability to perform hot line maintenance could result in pole height reductions of several feet, depending on the span of the structures. Tr. 10/19/06 at 68 (Smith).

8. A reduction in pole height of 20 inches could be achieved by increasing the shield angle from 30 to 45 degrees. Tr. 10/16/06 at 46 (LaForest); exh. VT Transco-Post CPG-1, att. 1 at 3, att. 5.

9. A reduction in pole height accomplished by changing the shield angle from 30 to 45 degrees would decrease the number of lightning strikes from 18.7 strikes to 18.3 strikes per 100 miles per year. However, the number of shielding failures (lightning strikes that contact the conductor directly rather than the shield wire) would increase from 0.16 shielding failures to 1.05 failures per 100 miles per year. Tr. 10/16/06 at 46 (LaForest); exh. VT Transco-Post CPG-6, att. 6 at 8-9.

10. Lightning strikes could result in momentary outages that could ultimately have an adverse impact on customer equipment such as computers and manufacturing equipment and could stress transformers. Tr. 10/16/06 at 96 (Dunn), 87 (LaForest); exh. VT Transco-Post CPG-6, att. 5 at 4-6.

11. Changing the shield angle from 30 to 45 degrees does not provide sufficient aesthetic advantages compared to the risk to reliability. Tr. 10/19/06 at 29 (Smith), 176 (Raphael).

12. Reduction in the vertical spacing of the conductors would prevent VELCO from performing hot line maintenance. Tr. 10/16/06 at 77-79 (Hiatt, Wright).

### Discussion

We find that the adverse impacts on reliability related to reducing the spacing between conductors does not justify the aesthetics improvements achieved. Further, we find that changing the shield angle from 30 to 45 degrees does not provide sufficient aesthetic advantages compared to the decreased reliability.

The Towns of Charlotte and Shelburne and the City of South Burlington (collectively "Three Municipalities") contend that the Department should be estopped from changing its position regarding the employment of compact design options. The Department had previously

recommended that VELCO be required to employ such options in its design of the line but subsequently modified its position out of concern for the impacts on reliability.

The Three Municipalities contend that they relied, to their detriment, on the Department's testimony that compact design options were feasible and should be employed. Further, the Three Municipalities state that VELCO failed to dispute testimony regarding compact design options until VELCO claimed in early September of 2006 that it would not be able to perform hot line maintenance on the 115 kV line if the compact line options were employed.

The Department is charged by statute to "represent the interests of the people of the state"<sup>2</sup> and "supervise and direct the execution of all laws relating to public service corporations" engaged in the siting of electric transmission facilities.<sup>3</sup> Further, Section 248 requires the Board and the Department to analyze whether a proposed transmission project "will promote the general good of the state."<sup>4</sup> The Department took a position early in this case and, during the course of the proceedings, modified its position based upon additional information. These factors lead us to conclude that it is inappropriate to estop a regulatory agency with the statutory charge of advocating for the good of the state from modifying its position during a Docket.

Finally, although VELCO failed to raise the issue of the reliability impacts due to compact design options in a timely manner, we are charged with ensuring that the project promotes the general good of the state. We conclude that, with the exceptions of the Queen City Tap (discussed below) and locations not specifically approved in today's Order, the design plans do not present an undue adverse aesthetic impact. Given this fact, taking action that would reduce the reliability of the project would not constitute reasonable mitigation. We find that the decreased reliability that would result from employing compact pole design options outweighs the aesthetic benefits that would accrue from implementing these designs.

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2. 30 V.S.A. § 2(b).

3. 30 V.S.A. § 2(a)(7).

4. 30 V.S.A. § 248(a)(2).

### III. Clearing

#### Findings

13. Trees should be retained to the extent feasible in those areas where screening has been a significant concern and the removal of specific vegetation would result in substantial visual impacts. Exh. DPS-Post CPG-28F at 2.

14. Danger trees are defined as a tree on or off the right-of-way that could contact transmission conductors. Exh. VT Transco-Post CPG-Cross-10 at Sec. 72.5.

15. There is lack of clarity associated with VELCO's utilization of vegetative management and selective clearing as an aesthetic mitigation strategy because the selection of danger trees to be removed are left up to the discretion of VELCO's forester. Exh. DPS-Post CPG-28F at 1-2.

16. The demarcation of trees to be removed must be done in a manner consistent with aesthetic mitigation. Exh. DPS-Post CPG-28F at 1-2.

17. There are specific locations along the 115 kV line where tree removal should be demarcated. These include: Lime Kiln Road (sheet L2.2); South Middlebrook Road (sheet L3.1); Monkton Road/Reed Road (sheet L3.2); Route 22A (sheet L4.1); Bostwick Road (sheet L7.1); Meach Cove (sheet L7.2a); Old Orchard Park (sheet L8.3); and the area in the vicinity of and south of the Queen City substation. Parties should have the opportunity to review the proposed tree removal in these areas. Exh. DPS-Post CPG-28F at 1.

18. Restricting this requirement to specific areas would not be overly burdensome compared to the benefits that would accrue from the action. Exh. DPS-Post CPG-28F at 1.

#### Discussion

The Department recommends that we require VELCO to consider cabling healthy trees that would otherwise be removed as danger trees in limited circumstances. VELCO contends that such action would be "bad policy, inconsistent with the new federal reliability standards, inconsistent with good vegetation management of bulk power system corridors, and would place Vermonter's at risk both as to safety, but also as to the adequacy and reliability of their electric power delivery system."<sup>5</sup>

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5. VELCO 11/3/06 Brief at 32.

We recognize that retaining certain trees in certain locations may constitute essential aesthetic mitigation measures. However, we are concerned with the potential impact on reliability. We thus will require VELCO to demarcate the trees it intends to clear in the locations identified by the Department above. Parties will then be given the opportunity to observe and comment on the proposed clearing.

At this time, no party has specifically identified any particular trees where these extraordinary measures should be employed. If a party does identify such a tree after the demarcation, that party may petition the Board to require VELCO to take extraordinary measures to retain the tree. We would expect that such a situation would occur only if no other reasonable mitigation measure is available and the tree in question provides exemplary aesthetic mitigation value.

In order to provide an efficient process for addressing the issue of tree clearing, we require VELCO to file plans marking the trees to be cleared for all of the identified areas at the same time. We will provide parties two weeks to file comments with the Board and request a site visit.

#### **IV. Underground Placement of Distribution at Road Crossings**

The parties have identified a number of road crossings between New Haven and South Burlington, at which pole heights would be in excess of 70 -100 feet due to clearance requirements associated with existing distribution facilities.<sup>6</sup> Those pole heights can, in many instances, be reduced if the distribution facilities are placed underground. VELCO neither supports nor opposes underground placement of distribution at those road crossings.<sup>7</sup> The road crossing at Ferry Road in Charlotte was previously addressed in the Board's Order of March 28, 2007. The road crossings at North Greenbush Road in Charlotte, at South Middlebrook Road in Ferrisburgh, and at Bostwick Road in Shelburne, are addressed elsewhere in today's Order.

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6. See exh. DPS-Post CPG-37.

7. VELCO Proposal for Decision, 11/3/06 at 19.

Findings

19. Significant pole-height reductions can be achieved at road crossings through underground placement of distribution. Tr. 10/16/06 at 17 (Dunn).

20. Any pole-height reductions achieved through distribution undergrounding will result in an increase in the cost of the Project, with possible additional impacts to natural resources. The cost of underground placement of distribution facilities will likely be treated as a localized cost by ISO-NE, and therefore will be paid for by Vermont ratepayers only. Tr. 10/16/06 at 18 (Dunn); tr. 10/16/06 at 82 (Storo, LaForest).

21. The costs associated with underground placement of distribution, together with the corresponding reduction in pole heights (if any), are as follows:

- i. Lime Kiln Road: \$8,000;
- ii. Plank Road: \$70,000 (Pole number 52: reduction from 82 feet to 77 feet; Pole number 53: reduction from 92 feet to 82 feet);
- iii. Monkton Road: \$78,000 (Pole number 79: reduction from 79 feet to 74.5 feet; Pole number 80: reduction from 101.5 feet to 83.5 feet; Pole number 81: reduction from 92 feet to 82 feet);
- iv. Route 7: \$110,000 (Pole number 83: reduction from 92 feet to 82 feet; Pole number 84: reduction from 102 feet to 97 feet);
- v. Tupper's Crossing: \$58,000 (Pole number 104: reduction from 79 feet to 74.5 feet; Pole number 105: reduction from 92.5 feet to 74.5 feet; Pole number 106: reduction from 87 feet to 72 feet);
- vi. Little Chicago Road: \$8,000 (Pole number 117: reduction from 77 feet to 67 feet; Pole number 118: reduction from 88 feet to 74.5 feet; Pole number 119: reduction from 74.5 feet to 65.5 feet);
- vii. Town Line Road: \$75,000 (Pole number 178: reduction from 79 feet to 61 feet; Pole number 179: reduction from 79 feet to 65.5 feet); and
- viii. Town Line Road (two additional distribution spans north): \$50,000 (Pole number 180: reduction from 79 feet to 70 feet); and
- ix. Harbor Road: \$245,000.

Exh. DPS-Post CPG-37.

22. VELCO's construction plans propose underground placement of distribution lines at Lime Kiln Road in Charlotte. Exh. VT Transco-Post-CPG-13, atts. 3 and 6; exh. DPS-Post-CPG-37; tr. 10/17/06 at 108 (Storo); exh. VT Transco-Post-CPG-18.



23. Lower pole heights through underground placement of distribution lines and/or telephone lines are needed to avoid an undue adverse aesthetic impact at the following road crossings: Lime Kiln Road in New Haven; Plank Road in New Haven; Tuppers Crossing in Ferrisburgh; Route 7 in Ferrisburgh (underground placement of a Verizon line); Monkton Road in Ferrisburgh; Reed Road in Ferrisburgh; Little Chicago Road in Ferrisburgh; Town Line Road in Charlotte, including the relocation of the line serving the Muggenthaler property to allow a reduction in the heights of additional poles; and Harbor Road in Shelburne. Exh. DPS-Post-CPG-38, att. 5, at 2; exh. DPS-Post-CPG-13, att. 3 at 2; tr. 10/19/06 at 103–107 (Raphael); Vissering ACRPC post-CPG pf. at 3–8; exh. Charlotte Post-CPG-21, att. D.

### Discussion

As reflected in the above findings, the record evidence supports the underground placement of distribution lines in the following locations: Lime Kiln Road in New Haven; Plank Road in New Haven; Tuppers Crossing in Ferrisburgh; Route 7 in Ferrisburgh (underground placement of a Verizon line); Monkton Road in Ferrisburgh; Reed Road in Ferrisburgh; Little Chicago Road in Ferrisburgh; Town Line Road in Charlotte, including the relocation of the line serving the Muggenthaler property to allow a reduction in the heights of additional poles; and Harbor Road in Shelburne. Additionally, we concur with the Department's observations that underground placement of distribution in the multiple Ferrisburgh locations is warranted because that town will be hosting a new transmission corridor as a result of the relocated line avoiding the City of Vergennes, and because “[s]ignificant aesthetic benefit at a reasonable cost will accrue in these locations.”<sup>8</sup>

## **V. Underground Placement of Transmission Line at Route 7 Crossing in Ferrisburgh**

The Addison County Regional Planning Commission and the Town of Ferrisburgh have requested that the transmission line be placed underground at the Route 7 crossing in

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8. Department Reply Brief re 115 kV Line, 11/15/06, at 23.

Ferrisburgh.<sup>9</sup> However, as the Department notes in its reply brief, this location is not characterized by long-distance views or highly scenic landscapes; instead, the area features open fields, a railroad crossing, and commercial development.<sup>10</sup> Furthermore, transmission pole heights at this crossing will be reduced by the underground placement of a Verizon line, which we are requiring in this Order.<sup>11</sup> Thus, we conclude that this location is not one that warrants the high costs of placing the transmission line underground.<sup>12</sup>

## **VI. Mitigation Plantings**

### Findings

24. The use of selective clearing at Lime Kiln Road in New Haven remains a concern, in that the existing tree line is within an area marked for “selective clearing.” Necessary mitigation plantings for this area are within the Town of New Haven's right-of-way, and the Town has declined to authorize those plantings. Other necessary mitigation plantings are proposed for the property of Four Hills Farm, and the owner is opposed to the landscape mitigation plan. Exhs. VT-Transco-Post-CPG-19, -22; exhs. DPS-Post-CPG-1, -9, -13 (Attachment 3), -38F at 4; Chart on Landowner Contacts for Off-Corridor Plantings Submitted by VT Transco at 1 (Oct. 31, 2006).

25. At Plank Road in New Haven, VELCO's mitigation plan (mitigation plan L2.3) should be modified by moving the proposed willows closer to the road, where they will provide more effective screening. VELCO's aesthetic consultant has represented to the Department's consultant that the existing rows of trees along Plank Road will remain and will provide effective screening. Proposed, necessary mitigation plantings are within the Town of New Haven's right-of-way, but the Town has declined to authorize the plantings. The Town has agreed to other plantings on a parcel it owns (identified as "1065-129"). VELCO has not contacted one property

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9. ACRPC/Ferrisburgh brief, 11/3/06, at 7.

10. DPS Reply Brief, 11/15/06, at 24; exh. DPS-Post-CPG-38F at 5–6.

11. See Finding 21, above.

12. See Order of 3/28/07 at 9 ("The Board has determined that placing a transmission line underground should be the option of last resort because of the costs associated with such action and the fact that, generally, aesthetic mitigation measures have been developed to ensure that an above-ground route does not have an unduly adverse impact on aesthetics.").

owner (deBoer) on whose land plantings are proposed. Exh. VT-Transco-Post-CPG-19; exhs. DPS-Post-CPG-1, -9, -13 (Attachment 3), -38F at 5; Chart on Landowner Contacts for Off-Corridor Plantings Submitted by VT Transco at 1-2 (Oct. 31, 2006).

26. At Pine Haven Shores Road (mitigation plan L7.7), the proposed plantings provide acceptable mitigation. However, the Town of Shelburne has not determined whether to approve plantings in the town right-of-way. Exh. VT-Transco-Post-CPG-19; exh. DPS-Post-CPG-38F at 10.

27. At Tupper's Crossing (mitigation plan L5.1), necessary mitigation plantings are proposed to be located within the Town of Ferrisburgh right-of-way. Ferrisburgh appears supportive but has not yet approved of the plantings. Exh. VT-Transco-Post-CPG-19; exhs. DPS-Post-CPG-33, -37, -38F at 7, -41; Chart on Landowner Contacts for Off-Corridor Plantings Submitted by VT Transco at 4 (Oct. 31, 2006).

28. At the Route 7 crossing and vicinity in Ferrisburgh (mitigation plan L3.3), VELCO has necessary mitigation plantings that are proposed to be located within the Town of Ferrisburgh right-of-way and the state right-of-way. Ferrisburgh appears supportive but has not yet approved of the plantings. VELCO has not yet presented evidence of state approval of the plantings proposed within the state right-of-way. Exh. VT-Transco-Post-CPG-19; exhs. DPS-Post-CPG-13 (Attachment 3), -33 -37, -38F at 5- 6, -41; Chart on Landowner Contacts for Off-Corridor Plantings Submitted by VT Transco at 3 (Oct. 31, 2006).

29. At Monkton Road/Reed Road (mitigation plan L3.2), VELCO's aesthetic consultant has represented to the Department's consultant that (1) the blue spruce and hedgerow located at the perimeter of the property, immediately to the west/southwest of the railroad tracks will be retained; (2) the vegetation to the south/southwest of pole no. 81, will be retained; (3) the existing screen of evergreens surrounding the home to the northeast of the line will remain. The proposed willow tree will also be critical for screening the views of westbound travelers. Necessary mitigation plantings are within the Town of Ferrisburgh right-of-way. Ferrisburgh appears supportive but has not yet approved of the plantings. Exh. VT-Transco-Post-CPG-19; exhs. DPS-Post-CPG-13 (Attachment 3), -38F at 5; Chart on Landowner Contacts for Off-Corridor Plantings Submitted by VT Transco at 3 (Oct. 31, 2006).

30. VELCO's mitigation plan for the LaPlatte River (mitigation plan L7.5a), included with VELCO's September 1, 2006, filing, apparently does not represent a final plan. A memorandum from VELCO's aesthetic consultant, Terry Boyle, dated August 30, 2006, states that "More detailed mitigation can be added, when an approved plan is received." Exh. VT-Transco-Post-CPG-19 (Attachment 1); exh. DPS-Post-CPG-38F at 10.

31. At Thompson's Point Road in Charlotte (mitigation plan L6.1), the existing plantings west of the railroad tracks should be retained to mitigate aesthetic impacts. Selective clearing is also a concern at this crossing. Necessary mitigation plantings are within the Town of Charlotte's right-of-way, and Charlotte has not determined whether to approve such plantings. Exh. VT-Transco-Post-CPG-19; exh. DPS-Post-CPG-38F at 8.

32. At the Slang in Ferrisburgh (mitigation plan L5.2), which is a natural area, VELCO must use native plantings. VELCO's mitigation plan as submitted on September 1, 2006, shows willow plantings, which are inappropriate. Instead of willow, VELCO should plant a cultivar of silver maple which exists in this area. Also, VELCO proposes to plant Washington hawthorn (*Crataegus phaenopyrum*), which is not a native species. VELCO should substitute a native species for the Washington hawthorn. Exh. VT-Transco-Post-CPG-19; exhs. DPS-Post-CPG-1, -9, -13 (Attachment 3), -38F at 7-8.

### Discussion

We are concerned that VELCO has not obtained necessary property-owner, municipal, and state approvals for some of the necessary off-corridor mitigation plantings. We include a condition requiring VELCO to submit revised mitigation plans for locations where a property owner, a municipality or the state denies permission for such plantings.

For the Plank Road location, we include a condition to ensure that the existing rows of trees along Plank Road are retained, that the proposed willow trees are relocated closer to the road, and that the screening is effective. For Monkton Road/Reed Road, we include a condition to ensure that the existing vegetation is retained, as noted in finding 29. For Thompson's Point Road, we include a condition requiring VELCO to retain the existing plantings west of the railroad tracks. For the Slang, we include a condition requiring VELCO to substitute native species for its proposed willow and Washington hawthorn.

We require VELCO to submit a final mitigation plan for the LaPlatte River for our approval, and we will provide an opportunity for comments on that plan.

Finally, we note that on April 10, 2007, VELCO filed revised landscape mitigation plans for Route 17 and Lime Kiln Road in New Haven, and on April 16, 2007, filed revised landscape mitigation plans for a number of road crossings. VELCO did not request any specific action be taken with respect to the revised plans, nor did VELCO request that the revised plans be entered into the evidentiary record.<sup>13</sup> Because VELCO's April 10 and April 16 filings may resolve some of the issues noted above regarding mitigation plantings, we set a deadline of July 9, 2007, for any responses to those filings.

## **VII. New Haven – Forest Drive**

On June 14, 2006, the Forest Drive Residents filed a letter stating that they have come to an agreement with VELCO regarding the location and some design of the line but disagree with the proposed use of guy wires on certain poles. In particular, the Forest Drive residents contend that poles 5 and 6 should be self-supporting structures as the guy wires otherwise required would impact the agricultural and recreational use of the field in which these poles are located.

### Findings

33. There is an incremental cost of \$30,000 to \$35,000 for a self-supporting steel pole that would eliminate the need for guy wires. Exh. DPS-Post-CPG-28B.

34. Guy wires for the poles in this area should be located in and around the existing cedars, which should remain. Additionally, the guy wires should be sited to minimize the impact on farming activities. Exh. DPS-Post-CPG-38F at 4.

### Discussion

Neither VELCO nor the Department support the use of self-supporting poles at the locations suggested by the Forest Drive Residents. The Department specifically states that it does not support the incremental cost of using such structures.

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13. Also, no party filed responses to VELCO's filing other than ACRPC and Ferrisburgh, which jointly responded, on May 2, 2007, to VELCO's April 16 filing.

We do not require VELCO to use self-supporting poles for structures 5 and 6. Although the Forest Drive Residents have raised the issue of the potential impact to the agricultural use of the field in which these poles are located, the landowner did not file any objections to VELCO's design plans. Since the directly affected landowner did not contend that the use of guyed poles would interfere with farming operations, we do not find that the incremental cost of self-supporting structures is justified.

### **VIII. South Middlebrook Road Crossing**

VELCO has worked with the parties and affected landowners to attempt to design an acceptable crossing of South Middlebrook Road in Ferrisburgh, and has prepared several alternate designs for the crossing.

At a February 13, 2007, status conference, VELCO reported that it had prepared a modified design to which all directly affected landowners had agreed, and that it would be filing that modified design.<sup>14</sup> VELCO has yet to file that modified design.

Because we have not yet received VELCO's latest revised plans for this area, we defer ruling on the final plans for the South Middlebrook Road crossing.

### **IX. Vergennes**

On August 17, 2006, VELCO filed a petition to amend the CPG to relocate 3500 feet of the line in the vicinity of Route 22A in the City of Vergennes ("Vergennes"). As explained below, we approve VELCO's August 17 petition.

#### **Findings**

35. Pole 86b will be exposed to future development likely to occur on a parcel owned by Vermont Land Trust. Mitigation plans would be better determined once there is a plan for the development project. Exh. VT Transco-Post CPG-15, att. 7 at 4.

36. The proposed reroute does not result in an undue adverse aesthetic impact. The primary issue related to aesthetics is pole 86BB, located near Route 22A, which would be aesthetically adverse. Exh. VT Transco-Post CPG-15, att. 7 at 4.

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14. Tr. 2/13/07 at 4.

37. VELCO proposes to install plantings on the frontage of the animal hospital and the car dealership to the north. Exh. VT Transco-Post CPG-15, att. 7 at 4.

38. Poles 86D and 86E, as well as guy anchors for pole 86E, are located in the statutory 50-foot buffer of a Class Two wetland. Placement of these poles and anchors can be performed in a manner that limits impact to protected functions and values of these wetlands and would not result in an undue adverse impact. A conditional use determination must be granted by ANR for the impacts to the Class Two wetland. Exh. VT Transco-Post CPG-15, att. 12 at 7-8.

39. The proposed reroute would not result in any undue adverse impacts on other environmental resources. Exh. VT Transco-Post CPG-15, att. 12.

### Discussion

The Department recommends that the Board retain jurisdiction to require aesthetic mitigation at pole 86b if development occurs at that location. We do not adopt this recommendation. At present there is no indication that there are any concrete plans for development at this location and we do not find it reasonable for VELCO to proactively monitor potential development at the site to determine if additional mitigation is necessary. If approached by the developer in the future, we expect VELCO to work in good faith to mitigate impacts.

VELCO contends that the plantings proposed on the western side of Route 22A, in front of the animal hospital and automobile dealership, are not necessary aesthetic mitigation measures.<sup>15</sup> Based upon the angle of Route 22A, it appears that the plantings in front of the automobile dealership are not necessary to mitigate the impact of pole 86BB from Route 22A. There has been some indication that the automobile dealership does not consent to the plantings proposed by VELCO.<sup>16</sup> Since the plantings would primarily benefit the automobile dealership, we require VELCO to install the plantings at the dealership only if requested by the dealership.

On August 30, 2006, ANR filed a letter stating that "[a]lternative locations for these structures [poles 86D and 86E] should be sought that would eliminate the direct impacts to the Class Two wetland and seek to avoid encroachments within the 50' riparian buffer and floodway." However, ANR did not present testimony on this issue during technical hearings.

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15. Exh. VT Transco-Post CPG-15, att. 7 at 5.

16. Exh. VT Transco-Post CPG-22.

The evidence that has been submitted to the Board indicates that poles 86D and 86E do not present undue adverse impacts.<sup>17</sup>

Based on the evidence presented, we find that the August 17 reroute will not result in adverse aesthetic or environmental impacts and approve its petition. We require VELCO to follow the recommendations of its consultants as contained in the prefiled testimony and exhibits of exhibit VT Transco-Post CPG-15.

## **X. North Greenbush Road**

VELCO has presented two alternative designs for the North Greenbush Road crossing in Charlotte. Each of the parties who have addressed this area – VELCO, Charlotte, and the Department – takes no strong position on which of the two alternatives should be approved.<sup>18</sup> Charlotte does request that the Board require VELCO to place underground existing distribution lines at North Greenbush Road, regardless of which design alternative is approved.

### Findings

40. VELCO's original line design for this area would approach Greenbush Road from the south, traveling on the west side of the railroad tracks. The line would cross Greenbush Road between structures 244 and 245. This design requires the span between structures 244 and 245 to provide vertical clearances to Greenbush Road such that structure 244 would be a 70-foot-tall wood tangent structure and structure 245 would be an 80-foot-tall steel angle structure. The line would then cross the railroad tracks and a GMP 12 kV primary feeder between structures 245 and 246. Structure 246 would be a 74.5-foot-tall guyed wood angle structure. The line would then travel north, towards Shelburne, on the east side of the railroad tracks. Exh. VT Transco-Post-CPG-1, sheet no. L050-18; exh. VT Transco-Post-CPG-18, att.1.

41. VELCO prepared an alternate design in an attempt to address concerns expressed by Charlotte. This alternative would move the crossing span of Greenbush Road further south. Similar to the original design, the alternate design would approach Greenbush Road from the

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17. We note that ANR has independent authority under the Vermont Wetlands Rules to determine whether poles 86D and 86E present an undue adverse impact.

18. VELCO Proposal for Decision, 11/3/06 at 41–43; Post-CPG Brief of Charlotte, Shelburne and South Burlington, 11/3/06 at 13; Department Proposed Findings and Initial Brief, 11/3/07 at 30.



south, on the west side of the railroad tracks. The line would then cross Greenbush Road, the railroad tracks and the GMP 12 kV primary feeder in the span between structures 244 and 245. This design would require structure 244 to be a 100-foot-tall steel angle structure, and structure 245 to be a 95-foot-tall steel angle structure. Exh. VT Transco-Post-CPG-18, sheet no. L050-18A and att. 1.

42. The alternative design would require taller poles because the GMP feeder line adjacent to Greenbush Road is at a higher elevation in order to cross the railroad tracks. Steel poles would be needed in this alternative in order to minimize landowner and wetland impacts. North of structure 245, the alternate design would be located on the east side of the railroad tracks to structure 246, which would be an 80-foot-tall wood tangent structure. Structure 246 would be located approximately 50 feet south of the original design location. To the north of structure 246, the line travels east of the railroad tracks. *Id.*

43. VELCO's original design would place a tall steel pole (structure 245) directly in view of northbound travelers on North Greenbush Road. That pole would also be prominent from Lake Road, which is one of the most scenic roads in Charlotte. Tr. 10/19/06 at 160 (Raphael); tr. 10/20/06 at 178, 202–203 (Donovan); exh. Charlotte Post-CPG-22.

44. VELCO's alternative design would have fewer visual impacts than the original proposal. However, the alternate route results in other adverse impacts. The pole heights in the alternate design would be approximately 20 feet taller than in the original design. Although the alternative route takes the pole out of the driver's view, they would traverse a wetland area and affect views within the Charlotte Park and Wildlife Refuge. Tr. 10/19/06 at 160–161 (Raphael); tr. 10/20/06 at 182–182, 201 (Donovan); exh. DPS-Post-CPG-38F at 9; exh. Charlotte Post-CPG-21, att. D.

45. VELCO should employ shorter spans on the approaches to the railroad crossing (poles 217 through 222) to reduce pole heights in this area. With reductions in pole heights through shorter spans, the mitigation plantings as represented in VELCO's plans for both alternative designs are adequate. Exhs. DPS-Post-CPG-33, -38F at 9, -41.

46. Regardless of which transmission-line design is used, the adverse visual impacts of the line would be mitigated by moving the existing distribution lines underground in the vicinity of the North Greenbush Road railway crossing, because the underground placement of the

distribution line would reduce the visual clutter at the crossing. Tr. 10/19/06 at 161–163 (Raphael).

### Discussion

We are presented with a difficult choice in the North Greenbush Road location, in that both design options have adverse impacts. Based on the evidence that we have received, we conclude that VELCO should implement its alternative design, as shown in exhibit VT Transco-Post-CPG-18, due to its lesser visual impacts from significant public viewing locations.

From the early stages of this proceeding, North Greenbush Road has been identified as an area of particular concern due to the road's designation as a scenic route, and the proposed heights of the poles and conductors resulting in visibility from scenic areas and preserved lands.<sup>19</sup> For these reasons, it is especially important in this particular location to mitigate the aesthetic impacts to the greatest extent practicable. The evidence shows that VELCO's alternative design can, and should, be modified to further reduce its impacts, by using shorter spans where possible to reduce pole heights and by placing the existing distribution lines in this area underground. We will require VELCO to prepare revised final design and landscape mitigation plans to reflect these modifications.

Finally, Charlotte notes that certain of VELCO's proposed plantings in this area may conflict with safety concerns raised by the town's road commissioner.<sup>20</sup> We will require VELCO to work with the town to address these concerns.

## **XI. Meach Cove**

VELCO has revised the line siting in the area of the Meach Cove property multiple times in response to party concerns. VELCO first moved the line corridor west, away from the existing

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19. Exh. DPS-DR-1 at 25–26.

20. Post-CPG Brief of Charlotte, Shelburne and South Burlington, 11/3/06 at 13.

corridor near Davis Park, by proposing the so-called "Shelburne Reroute" in response to testimony that the original proposal would have an undue adverse effect on aesthetics.<sup>21</sup>

Next, VELCO proposed moving the line even further west from the so-called Shelburne Reroute in response to testimony from the ANR that the Shelburne Reroute would have an adverse effect on the McCabe's Brook wetland complex. That wetland complex is important for several values and functions listed in the Vermont Wetland Rules including: water quality protection; floodwater and stormwater storage; wildlife habitat; and erosion control. It also is an excellent deer wintering habitat. ANR has recommended that any possible measures to avoid impacts to this wetland should be taken.<sup>22</sup>

VELCO subsequently proposed, on September 1, 2006, design and mitigation plans for the Meach Cove property that, starting on the southern end, depict the line generally following the railroad tracks until it crossed Limerick Road, then running west of that road until pole 287, after which it crossed back over Limerick Road and ran largely between that road and the downslope wetlands until pole 298. From there, the line would run down the slope to lower ground in order to cross Harbor Road and reach the Shelburne substation.<sup>23</sup>

Then, through evidence offered at a technical hearing on October 17, 2006, VELCO proposed to modify the September 1 proposal by moving the line further west. In this regard, the most significant change was proposed for the area north of the first Limerick Road crossing, and that was to move the line several hundred feet to the western edge of "Field #1." The second Limerick Road crossing was moved further north, and after that crossing the route would remain east of the Limerick Road but, in order to reduce clearing, would run about 50 feet west of the proposed September 1 routing until it joined with that prior routing at pole 297.<sup>24</sup>

Finally, on November 29, 2006, VELCO filed its current proposal ("the November 29 proposal"). The November 29 proposal closely follows the October 2006 design at the southern end of the Meach Cove property. The primary change in the November 29 proposal is that, at the

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21. Exhs. CD-2 (Meach Cove), DPS-DR-1 at 27; Henderson-King/Lalley pf. at 11, 15, 29, 33 (Dec. 17, 2003); Dunn, supp. pf. at 7-8 (Feb. 6, 2004).

22. Alan Quackenbush, supp. pf. at 3; exh. VELCO TD-Reb-3.

23. Exhs. VT-Transco-Post-CPG-18 (L-050-20, -21) and -19 (L7.2a, 72b).

24. Exh. VT Transco-Post-CPG-Cross-7; tr. 10/17/06 at 103-05, 122 (Boyle).

northern end of the Meach Cove property, the line has been shifted closer to Limerick Road to reduce the amount of clearing. In this regard, poles 294 through 298 have been shifted west, closer to the road, out of the main wooded area upslope from the wetland complex and into an area that mixes open land with a small wooded area. From pole 297 north, there is a sharp angle which runs to pole 297C, and then the line shifts back southeast to reach pole 298.<sup>25</sup>

### Findings

47. The realignment presented in VELCO's November 29 proposal would follow, in part, an existing road (Limerick Road). This alignment along the road substantially reduces the impacts on the woodlands to the east of the road, and creates the appearance of the line following an existing corridor; such roadside placement is a more logical and customary location for a power line. Tr. 12/19/06 at 64–67 (Raphael); tr. 10/17/06 at 103–105 (Boyle); exh. VT Transco-Post-CPG-Cross-7.

48. Other improvements in the November 29 realignment are its avoidance of the middle of a currently used agricultural field, and its placement farther from Meach Cove field number two, which has been identified as a potential development site. Tr. 12/19/06 at 67 (Raphael); tr. 10/17/06 at 103–105 (Boyle); exh. VT Transco-Post-CPG-Cross-7.

49. Relocation of the transmission line to the McCabe's Brook area could eliminate (or greatly reduce) the creation of a new transmission corridor on the lands of Meach Cove. Tr. 12/19/06 at 70, 87–88 (Raphael).

50. VELCO's November 29 proposal would have an adverse impact on aesthetics, but the adverse impact would not be undue, if VELCO addresses the issues set forth in Findings 51 through 55, and if an alternative location in or near the McCabe's Brook wetland is not possible. However, it will be important for VELCO to retain as much of the existing vegetation as possible in Meach Cove. Tr. 12/19/06 at 52 (Boyle), 64–67, 83–84 (Raphael); findings 47–49, above.

51. The acute angle at pole 297C presents new, adverse aesthetic impacts when viewed from the Ticonderoga at Shelburne Museum, although those impacts may not be shocking and offensive. Tr. 12/19/06 at 73–73, 84–87. (Raphael).

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25. Exhs. VT Transco-Post-CPG-44 (L- 050-020, -21) and -64; 12/19/06 tr. at 45–46 (Dunn).

52. There is a mistake on the plans for the November 29 proposal. Sheet L050-21 should show underground placement of the distribution crossing next to pole 281. Tr. 12/20/06 at 44 (Storo).

53. VELCO's November 29 proposal includes underground placement of distribution facilities that results in lowering the heights of transmission poles 274 through 282, at an incremental cost of \$400,000. This underground placement of distribution facilities would result in a reduction in height of pole 274, which is essential for aesthetic mitigation. The underground placement of distribution utilities from poles 275 to 282 would lower transmission pole heights as much as possible in order to avoid conflict with the operation of a nearby airplane runway to the north of the poles. Exh. DPS-Post-CPG-37; tr. 10/17/06 at 110, 112 (Castonguay); tr. 12/20/06 at 43–44 (Dunn, Storo).

54. At Bostwick Road (mitigation plan L7.1), poles 271 through 274 must be relocated to the west to save the existing tree line as an intact background element for the poles. VELCO has not done this, and thus the impact of selective clearing remains a concern. Also, VELCO has not secured permission for mitigation plantings from relevant landowners. Exh. VT-Transco-Post-CPG-19; exhs. DPS-Post-CPG-13 (Attachment 3), -38F at 9; Letter, K. Hayden to S. Hudson re Response to Record Requests at 2 (Oct. 31, 2006); Chart on Landowner Contacts for Off-Corridor Plantings Submitted by VT Transco at 6 (Oct. 31, 2006).

55. Near Harbor Crossing, the width of the cut going uphill (back towards the Meach Cove property) must be addressed before VELCO's mitigation plan (mitigation plan L7.3) could be approved. Exh. VT Transco-Post-CPG-19; exh. DPS-Post-CPG-38F at 10.

### Discussion

Shelburne contends that VELCO's current plan is inconsistent with the Board's January 2005 Order. Shelburne also requests the opportunity for further discussions about possibly moving the line to the McCabe's Brook wetland, or placing the line underground. Shelburne further requests that, if the Board accepts VELCO's current design for the Meach Cove property, then the acute angle should be eliminated, which VELCO has expressed a willingness to do.

Meach Cove contends that the Board should require VELCO either to move the transmission line to the west through McCabe's Brook, or to place the line underground.<sup>26</sup> Meach Cove further contends that VELCO's current proposal for the Meach Cove property constitutes a substantial change for which an amended CPG is required. Meach Cove also asserts that it has not had sufficient opportunity to evaluate and respond to VELCO's proposal to remove the acute angle pole.

In response to Shelburne's and Meach Cove's arguments, VELCO asserts that both the Board's January 28, 2005, Order and the Supreme Court's decision expressly contemplate revisions to the plans as part of the post-CPG process. VELCO, citing the Board's Order of 2/23/07 in this docket, further contends that to allow such revisions serves the public interest. VELCO also asserts that additional hearings are not needed to address the acute angle presented in its November 29 proposal, and that the McCabe's Brook relocation is not a viable alternative.

We conclude, first, that we must reject Shelburne's and Meach Cove's contentions that VELCO's November 29 line design is inconsistent with our January 28, 2005, Order, and that it represents a substantial change for which VELCO must obtain an amended CPG. As VELCO correctly notes, refinement of and modifications to the plans were expressly contemplated as part of the post-certification process:

... the public interest will be best served by allowing consideration of those [revised Ferry Road] plans. The post-certification process has, from the outset, been conceived as an iterative process, in which VT Transco has provided drafts of its plans with the parties and affected municipalities and landowners in order that VT Transco may, after considering the comments and concerns of those entities, improve its plans to the extent feasible.<sup>27</sup>

We find nothing in the Vermont Supreme Court's March 10, 2006, order that is inconsistent with this approach which we have followed throughout the post-certification review.

Second, after considering the record evidence and the briefs of the parties, we conclude that we should require VELCO, in consultation with the other involved parties, to explore further the potential of locating the line in (or near) the McCabe's Brook wetland. We have not reached this conclusion lightly, and we are well aware of the potentially significant impacts of siting a

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26. Meach Cove Proposed Findings and Conclusions, 2/5/07 at 22-24.

27. Order of 2/23/07 at 2.

new transmission line corridor in a wetland area. As we noted in our review of the proposed Lamoille County 115 kV transmission line:

"There should be a compelling reason for imposing a new land use, such as a transmission line, on land that does not currently host a transmission line."<sup>28</sup> This statement is particularly true when a new corridor is proposed on sensitive natural communities such as forested wetlands.<sup>29</sup>

In the present case, any route through the Meach Cove property will impose a new land use in much of that property, and it is possible that the aesthetic benefits might be sufficient to constitute a "compelling reason" to justify placement of a new transmission line corridor through the McCabe's Brook wetland area. In fact, as noted below, at another, nearby location — Blodgett Field in Shelburne — the involved parties have all agreed, and we have found, that it is acceptable to place the 115 kV transmission corridor within a wetland area, with appropriate mitigation measures.

Locating a new 115 kV corridor will have significant, long-term impacts on Meach Cove's property. Meach Cove is only bearing these impacts because VELCO, first, proposed using an existing 34.5 kV corridor through the heart of a residential neighborhood, and, second, proposed moving the new line to a significant wetland area. As a result of VELCO's initial attempts to site the 115 kV line in locations that were problematic, it has essentially by default ended up with the Meach Cove property as the location for the line. But the Meach Cove property itself presents design challenges, such that VELCO's design for the property has continually evolved, up to its November 29 proposal.

In light of these design challenges and the long-term impacts of the transmission line, we need to ensure that the best possible alternative has been selected. For these reasons, we are persuaded by Meach Cove and Shelburne's argument that a further evaluation of the possibility of locating the line in, or near, the McCabe's Brook wetland is warranted. In the course of this evaluation, VELCO must consult in good faith with Meach Cove, any other affected property

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28. Docket 7032, Order of 3/16/06 at 80.

29. Docket No. 7032, Order of 5/16/07 at 2 (quoting Docket No. 7032, Order of 3/16/06 at 80).

owners, Shelburne, ANR, and the Department in an attempt to develop an acceptable line location in or near the McCabe's Brook wetland.<sup>30</sup>

This evaluation may well confirm VELCO's contention that McCabe's Brook is not a viable alternative.<sup>31</sup> However, at this time we are not persuaded that VELCO has made every reasonable effort to site the line in the vicinity of that wetland. Because VELCO's November 29 proposal would have an adverse impact on aesthetics, the Quechee analysis requires VELCO to implement generally available mitigating steps that a reasonable person would take, in order to avoid an *undue* adverse impact.

Although we are requiring VELCO to re-examine the McCabe's Brook alternative, we recognize that the public interest is not likely to be served by a significant delay in reaching final resolution, given that this transmission line is needed for reliable electric service.<sup>32</sup> Thus, we establish a deadline of August 15, 2007, for VELCO to report back on the feasibility of a McCabe's Brook location, and a deadline of August 29, 2007, for parties and affected property owners to submit comments on VELCO's report and, if any party so wishes, a showing that an additional hearing should be conveyed to address the feasibility of a McCabe's Brook location.

We further conclude that underground placement of the line in the Meach Cove property is not warranted, due to its cost and due to the availability of an acceptable overhead design. We have previously concluded in this Docket that underground placement of the 115 kV line is so costly that it should only be reserved for those locations where an acceptable overhead design

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30. It is our understanding that a McCabe's Brook location is unlikely to involve newly affected property owners. If this understanding is incorrect, VELCO must include the names and addresses of any owners of newly affected properties in its report (discussed below) that is due August 15, 2007.

31. As we noted in our review of the proposed Lamoille County 115 kV transmission line:

"There should be a compelling reason for imposing a new land use, such as a transmission line, on land that does not currently host a transmission line." This statement is particularly true when a new corridor is proposed on sensitive natural communities such as forested wetlands.

Docket No. 7032, Order of 5/16/07 at 2 (quoting Docket No. 7032, Order of 3/16/06 at 80). In the present case, any route through the Meach Cove property will impose a new land use in much of that property, and it is possible that the aesthetic benefits might be sufficient to constitute a "compelling reason" to justify placement of a new transmission line corridor through the McCabe's Brook wetland area.

32. Order of 1/28/05 at 7–59.



proves unattainable.<sup>33</sup> With respect to the Meach Cove property, as the above findings demonstrate, VELCO's November 29 proposal represents an overhead design that would not result in undue adverse aesthetic impacts, *unless* the line can be relocated to the McCabe's Brook wetland. Thus, we conclude that the transmission line can be constructed above-ground in this area without undue adverse aesthetic impacts, either in the vicinity of the McCabe's Brook wetland or, failing that, in accordance with VELCO's November 29 design (with the additional conditions noted below). Thus underground placement in this area is not justified.

Finally, even if the line cannot be located in the McCabe's Brook wetland, other mitigating measures must be implemented before we could issue final approval for VELCO's November 29, 2006, design plan for the Meach Cove property. Those mitigating measures are: (1) the acute angle at pole 297C must be eliminated if possible;<sup>34</sup> (2) VELCO must make all reasonable efforts to retain existing vegetation in the Meach Cove property; (3) at Bostwick Road, poles 271 through 274 must be relocated to the west to save the existing tree line as an intact background element for the poles; and (4) near Harbor Crossing, VELCO must make all reasonable efforts to minimize the width of the cut going uphill (back towards the Meach Cove property). We require VELCO to modify its November 29 plans accordingly, and submit the modified plans by August 15, 2007.

## **X. Blodgett Field**

VELCO's proposed design for the transmission line in the vicinity of Blodgett Field in Shelburne has undergone several iterations, in response to concerns raised by other parties. In its

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33. In our decision to require underground placement at the Ferry Road crossing in Charlotte, we stated:  
The Board has determined that placing a transmission line underground should be the option of last resort because of the costs associated with such action and the fact that, generally, aesthetic mitigation measures have been developed to ensure that an above-ground route does not have an unduly adverse impact on aesthetics.

Order of 3/28/07 at 9.

34. Because Meach Cove and the other parties have not had sufficient opportunity to address the elimination of the acute angle, we require VELCO to work with the involved parties to attempt to reach agreement on the most appropriate design for eliminating the acute angle. We also require VELCO to file its design with the Board for approval, whether or not the design represents a consensus; the Board will provide parties an opportunity to submit comments and, if any party so wishes, make a showing that an additional hearing should be conveyed to address the revised design.

initial petition, submitted in June, 2003, VELCO proposed to depart from the existing 34.5 kV corridor north of the Shelburne substation in order to reduce impacts on The Nature Conservancy's ("TNC") property and residential development along Harbor and Bay Roads. Specifically, coming out of the Shelburne substation, the existing 34.5 kV line follows the Ticonderoga Haul Road and passes through TNC's property until reaching Bay Road in Shelburne. VELCO initially proposed, and the Board approved, a new, approximately 1.6-mile corridor that crosses the McCabe Brook north of the Shelburne substation, heading in an easterly direction at the edge of an open field ("Blodgett Field") behind the vacant Blodgett factory (now Shelburne Athletic Club), until reaching the Vermont Railway railroad tracks. From here the line would follow the railroad for approximately 1.1 miles, to a point on Bay Road where the railroad meets the existing 34.5 kV line.<sup>35</sup>

As part of the post-certification process required by the Board's January 28, 2005, Order, VELCO submitted preliminary construction plans to the parties for comment, prior to submitting final construction plans to the Board. On February 24, 2006, VELCO first submitted preliminary construction plans for the 115 kV line. In response to concerns raised by Shelburne, VT Transco added several additional poles along Blodgett Field in order to reduce pole heights in its June 1, 2006 filing.<sup>36</sup>

Subsequently, at Shelburne's request, VELCO shifted the location of the line in the northeast corner of Blodgett Field, to avoid interference with the soccer fields recently built for the Town of Shelburne. Specifically, as shown on the September 1, 2006, construction plans submitted to the Board, poles 310 to 312 were shifted between 15 and 25 feet to the north of Blodgett Field and into TNC's property. In addition, structure 313 in the northeast corner of

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35. Dunn 6/5/03 pf. at 11–12; exh. TD-5; Dunn and Rowe 6/5/03 pf. at 20–21; exh. VELCO TD-Supp(1)-3. *See* Order of 1/28/05 at 194.

36. Tr. 12/6/06 at 96-97 (Clapp); exh. VT Transco-Post CPG-18, Plan and Profile Sheet Nos. L050-22 and L050-23; exh. VT Transco-Post CPG- 18, att. 1 at 2.

Blodgett Field was modified to a steel pole design to remove guy wires from proximity to the playing fields.<sup>37</sup>

On October 3, 2006, ANR filed a letter with the Board indicating its concerns with respect to the proposed location of poles 305 to 313 in VELCO's September 1<sup>st</sup> design. ANR expressed concern as to the poles' impact on the wetlands in the area of McCabe Brook, and specifically noted that pole 305A was sited approximately eight feet from the top-of-bank of the brook and within the regulatory floodplain. ANR also noted its concerns about the disturbance associated with the additional poles as well as the long-term impacts of a lower conductor than originally proposed.<sup>38</sup>

To address ANR's concerns with respect to structure 305A and its proximity to McCabe Brook, during the December 6, 2006, technical hearing VELCO presented modifications to its design to remove structure 305A altogether. This adjustment resulted in other adjustments to nearby poles; specifically, pole 305 was increased in height by 13.5 feet, structure 306 was increased by 9 feet, structure 306A was increased by 9 feet and required some guying, and structure 307 was increased by 4.5 feet.<sup>39</sup> At the December 20, 2006, technical hearing, VELCO submitted revised Blodgett Field plans showing these modifications; those plans (which are dated December 12, 2007) were admitted into the evidentiary record as exh. VT Transco-Post-CPG-67.<sup>40</sup>

During technical hearings on December 19, 2006, Shelburne presented a settlement agreement between the Town and TNC regarding the shift of poles 310 to 313 on to the TNC's property adjacent to Blodgett Field (the "Settlement Agreement"), as well as an agreement between the Town, TNC and VELCO with respect to wetland enhancement in the vicinity of Blodgett Field (the "Wetland Enhancement Proposal").<sup>41</sup> The central components of the settlement agreement involve TNC's agreement to allow VELCO's line, substantially as shown in

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37. Tr. 12/6/06 at 96-97 (Clapp); exh. VT Transco-Post-CPG-18, Plan and Profile Sheet Nos. L050-22 and L050-23; exh. VT Transco-Post-CPG-18, att. 1 at 2; tr. 12/19/06 at 21-22 (Bohne) (the Town proposed to move the line away from the soccer fields).

38. Letter from D. Englander to S. Hudson, 10/3/06 at 1.

39. Tr. 12/6/06 at 100-101 (Storo).

40. See exh. VT Transco-Post-CPG-67, Plan and Profile Sheets No. L050-22 and L050-23.

41. Tr. 12/19/06 at 6; see exhs. Blodgett Field-1 and Blodgett Field-2.

exh. VT Transco-Post-CPG-67, to remain on its property, in exchange for the Town's agreement to grant certain conservation easements to TNC.<sup>42</sup>

Following the December technical hearings, VELCO engaged in an effort to evaluate how far it could feasibly shift structures 313 to 315 to the east towards the railroad, taking into account Vermont Railway concerns, the nearby Champlain Water District ("CWD") water main, and other safety, construction and maintenance issues. In making its evaluation, VELCO participated in discussions with the Vermont Agency of Transportation, CWD, and Vermont Railway. VELCO has determined that it is possible to locate structure 313 a revised distance of 25 feet west of the CWD water main, and structures 314 and 315 a revised distance of 35 feet west of the CWD water main. Compared to the September 1<sup>st</sup> design, the poles will shift the following respective distances to the east: pole 313, 25.66 feet; pole 314, 17.5 feet; and pole 315, 17.31 feet. The design modifications will not require any changes in pole heights, and no structures will require guying.<sup>43</sup>

All involved parties have agreed that the Board should approve VELCO's September 1<sup>st</sup> construction and landscape mitigation plans for the Blodgett Field area, with the modifications shown on VELCO's plans dated December 12, 2006 (exh. VT Transco-Post-CPG-67) and the proposed pole location modifications described in VELCO's January 17, 2007, filing, and as further supplemented by the Wetland Enhancement Proposal.<sup>44</sup>

### Findings

56. The incremental wetlands impacts associated with the September 1<sup>st</sup> design compared to the initial February 24<sup>th</sup> design total two-tenths of an acre of impacted wetlands. Tr. 12/6/06 at 97 (Clapp).

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42. Tr. 12/19/06 at 6-7 (McLean); exh. Blodgett Field-2.

43. Letter from K. Hayden to S. Hudson, 1/17/07, with enclosed Memorandum from A. Storo and P. Lind dated 1/16/07.

44. VELCO Proposal for Decision Regarding Blodgett Field, 1/25/07; letter from Sarah Hofmann to Susan Hudson, 1/25/07; letter from Joseph McLean to Susan Hudson, 1/25/07; letter from Gerald Tarrant to Susan Hudson, 1/25/07.

57. The wetland area is a level terrace with a very thick forest understory of shrubs. Removal of between 10 and 25 additional feet of forest overstory will not result in an undue adverse impact to the wetlands. The LaPlatte River complex further to the north, which is a defined rare and irreplaceable natural area, can be managed in such a manner as to promote the growth of shrubs and ground level vegetation. In addition, there are no rare, threatened or endangered species in the immediate area of the 100-foot right-of-way. Tr. 12/6/06 at 99 (Gilman); exh. VT Transco-Post-CPG-18, at 4.

58. VELCO proposes selective clearing along the Blodgett Field right-of-way, and within the right-of-way adjoining the railroad tracks, from pole 305 through pole 325, north of the LaPlatte River. Within the LaPlatte Rivermarsh Natural Area, VELCO will use special vegetative management practices in the utility corridor that will include controlling invasive non-native species. Tr. 12/6/06 at 98 (Storo); exh. VT Transco- Post-CPG-67, Plan and Profile Sheets No. L050-22 and L050-23; exh. Blodgett Field-1 at 4.

59. The increase in height of poles 305 through 307 will not result in an undue adverse impact on aesthetics. The poles that have been adjusted upward are all behind the sewer plant, the Public Works Department and the salt pile, salt shed and rescue squad, which collectively can be considered a small industrial complex. That complex essentially blocks views from Harbor Road, which provides the nearest public view. Pole 313 is behind the Shelburne Athletic Club. Tr. 12/6/06 at 101 (Boyle); exh. VT Transco-Post-CPG-67, Aesthetic Landscape Mitigation Plan Sheet No. L7.5.

60. While there may be some adverse effect on the wetlands and buffers as a result of VELCO's design, the proposed line cannot practicably be located outside the wetland areas. The Wetlands Enhancement Proposal is intended to compensate for the incremental impacts to wetlands that result from moving the line away from the soccer fields. Exh. Blodgett Field-1 at 1; tr. 12/19/06 at 22 (Bohne).

61. The Wetland Enhancement Proposal<sup>45</sup> contains the following mitigation measures:

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45. VT Transco has committed to submit the Wetland Enhancement Proposal to ANR to accompany its Conditional Use Determination permit application. Tr. 12/19/06 at 8 (Hayden).

- Right-of-way Vegetation Management: VT Transco agrees to employ special vegetation management practices, including controlling invasive non-native species, with respect to the transmission corridor and danger trees.
- Restoration Plantings: The Town agrees to undertake plantings of a mix of additional tree species in the wetlands located within Blodgett Field. The plan calls for a five-to-one ratio of plantings – a total of 300 young trees – which will offset the incremental wetland impact.
- Invasive Species Control: Three species of invasive exotic plants found within the wetlands located within Blodgett Field will be removed by a certified contractor acting under the supervision and technical guidance of the Town and The Nature Conservancy.

Exh. Blodgett Field-1 at 4–5; tr. 12/19/06 at 17– 18 (Gilman).

62. The pole locations depicted in VELCO's September 1<sup>st</sup> design, as modified by VELCO's December 12<sup>th</sup> filing of revised plan and profile sheets showing an area of selective clearing from pole 305 through pole 315 and removal of structure 305A, and supplemented by the Wetland Enhancement Proposal, provide adequate mitigation to avoid an undue adverse impact associated with the incremental impacts to the two-tenths of an acre of wetlands. Tr. 12/20/06 at 11–12 (Gilman).

63. The Settlement Agreement, to which VELCO is not a party, expresses a desire to have poles 313 to 315 shifted closer to the railway. Exh. Blodgett Field-2 at 1.

### Discussion

The parties have engaged in a collaborative process to resolve the complex issues associated with a route through this area, having duly considered safety, environmental, and aesthetic impacts. Based upon the record evidence, VELCO's proposed construction and landscape mitigation plans for the 115 kV line in the area of Blodgett Field in the Town of Shelburne filed on September 1, 2006, with the modifications shown on VELCO's plans dated December 12, 2006 (exh. VT Transco-Post-CPG-67) and the proposed pole location modifications described in VELCO's January 17, 2007, filing, and as further supplemented by the Wetland Enhancement Proposal, meet all applicable Section 248 criteria, and the construction thereof will promote the general good of the state, and therefore is approved. We will require VELCO to submit conforming plans as a compliance filing.

## **XI. Bay Road**

In our January 28 Order we required VELCO to place the 115 kV line underground for approximately 1.3 miles in the vicinity of Bay Road in Shelburne. We further stated:

The exact start and stop points for undergrounding would be determined in a post-certification proceeding based on appropriate engineering and aesthetic analysis involving affected residents and the Town [of Shelburne]. VELCO will also need to evaluate whether any archaeological or environmental issues might present significant problems for an underground design. If such problems are encountered, VELCO must bring them to our attention, along with all reasonable measures that it has identified to address the problems.<sup>46</sup>

On November 1, 2005, VELCO filed a feasibility report with the Board and parties concluding that placing the line underground would impact approximately 2.5 acres of wetlands, cross three streams, and impact extensive populations of the endangered species, Torrey's rush (*Juncus torreyi*), for which it would need to obtain a takings permit from ANR.

On June 1, 2006, VELCO filed design plans for the Bay Road underground segment. Comments on VELCO's design plans were due by June 22, 2006. No party filed comments regarding the presence of, or impacts to, Torrey's rush.

In our Scheduling Order for technical hearings on VELCO's final design plans, we stated that:

VELCO must file any outstanding information necessary for the Board's review of the 115 kV line by September 1, 2006. This information shall include all exhibits that VELCO intends to offer at the hearing, a list of witnesses with a summary of the testimony, and other information as indicated below. This information must also be filed with the landowners that submitted comments on VELCO's 115 kV design plans. On October 3, 2006, other parties will have the opportunity to file comments on the information contained in VELCO's September 1 filing, any exhibits the parties intend to offer at the hearings, and a list of witnesses with a summary of the testimony.<sup>47</sup>

No party identified Torrey's rush as an issue in the October 3 filings.<sup>48</sup>

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46. Docket 6860, Order of 1/28/05 at 129.

47. Order of 8/9/06 at 2 (footnote omitted).

48. In accordance with the schedule, ANR filed comments on October 3, 2006; its comments did not mention Torrey's rush.

On February 13, 2007, the Board held a status conference to discuss the status of, and expected schedule for, the takings permit for Torrey's rush for the underground section along Bay Road. ANR and VELCO indicated that they were working to mitigate the impacts of undergrounding and that VELCO was expecting to provide additional information to ANR within two weeks of the date of the status conference.<sup>49</sup>

All parties, including ANR, should have been aware of the existence of Torrey's rush in the Bay Road area since June 3, 2003, when VELCO filed its petition and supporting prefiled testimony, which noted the presence of Torrey's rush. We ordered VELCO to place the line underground in this area on January 28, 2005, and VELCO provided a feasibility report noting the extensive populations of Torrey's rush on November 1, 2005, to all parties, including ANR. Despite providing the opportunity to file comments regarding the feasibility report, no party filed any comments. VELCO filed its final design plans for the 115 kV line, including the Bay Road underground segment, on June 1, 2006. Parties were twice given an opportunity to present any concerns with those plans, on June 22 and October 3, 2006; no party raised issues with respect to Torrey's rush.

Thus, ANR has had ample opportunity to file comments in this Docket regarding the potential impact of undergrounding along Bay Road on Torrey's rush but has not done so. Prior to our February 13 status conference the only statements that ANR made regarding this issue were to the press.<sup>50</sup> In the four months since the status conference, we have received no further information on the status of the ANR takings permit.

We are aware that VELCO requires a takings permit from ANR. However, neither ANR nor any other party has recommended that we deny approval of VELCO's final design plans for the underground section of the 115 kV line at Bay Road in Shelburne. From the lack of any opposition filed in this Docket, we must assume that the underground section of the 115 kV line will not result in any unacceptable impacts. Therefore, we approve VELCO's plans for this underground section of the 115 kV transmission line.

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49. Tr. 2/13/07 at 24-25.

50. See, *Burlington Free Press*, December 8, 2006, statement made by Commissioner Wayne LaRouche of ANR's Division of Fish and Wildlife.



## **XII. South Burlington**

### Underground Placement of Structures 329 through 335

#### Findings

64. From poles 329 to 335, the proposed 115 kV line from New Haven to Queen City would be placed on steel structures that would also carry the existing New Haven to Williston 115 kV line. Exh. VT Transco-Post CPG-46.

65. Existing structures 329 through 335 would be replaced with double-circuit steel poles on foundations. These poles would be moved to the east by 15 feet. Exh. VT-Transco-Post CPG-7 at 1; tr. 12/6/06 at 61 (Storo).

66. Some of structures 329 through 335 are presently visible from Lake Champlain. Tr. 12/5/06 at 198-199 (Raphael).

67. The heights of structures 329 through 335 would not increase compared to the present structures. The replacement of structures 329 through 335 would not result in an incremental aesthetic impact. Tr. 12/6/06 at 10-11 (Boyle).

68. The cost of placing approximately 0.7 miles of double-circuit, 115 kV line, currently located on poles 326 through 335, underground is estimated to be \$5,831,000. Exh. VT Transco-Post CPG-21; tr. 12/6/06 at 14 (Storo, Johnson).

69. The cost of placing 2200 feet of transmission line underground adjacent to the Bartlett Bay Community is approximately \$4,000,000. Tr. 12/6/06 at 16-17 (Storo, Johnson).

#### Discussion

The City of South Burlington ("City") recommends that we require VELCO to place this portion of 115 line underground. However, VELCO has demonstrated that the replacement of the existing structures with structures of the same height will not be a significant visual change. There has been no testimony indicating that the proposal would create an adverse aesthetic impact or that placing the lines underground would constitute reasonable mitigation.

The testimony presented indicates that the replacement of the poles in this area will have minimal aesthetic impact. Even if we were to accept South Burlington's claim that VELCO's cost estimates for placing the line underground in this area are overly high, the costs would still

be substantial. Given the limited visual impact of VELCO's plans in this area there are no compelling reasons to place the line underground in this area. Consequently, we approve VELCO's design plans for poles 329 through 335.

We have determined that placing the line underground at this location is not necessary from either an aesthetic or public health perspective. We have required only two portions of the roughly sixty-mile project be placed underground. Such action entails considerable expense to ratepayers and has been justified in these areas only due to the aesthetic impacts of the project in the Bay Road and Ferry Road areas. These two areas presented unique aesthetic impacts — the first involved the view of the lines from Lake Champlain and the required clearing that would occur on the shoreline of the lake, while the second involved an area where parties had unsuccessfully attempted to devise an overhead route for several years. Our January 28, 2005, Order specifically identified these two areas as requiring extraordinary aesthetic mitigation. The situations that were present in these two areas is not present in this portion of South Burlington.

The Waibels contend that the potential health impacts of electromagnetic fields ("EMF") is a justification for placing the line underground in this area. We previously addressed this issue in our Order of January 28, 2005, where we stated: "[w]e will not require VELCO to place underground any portion of the project based upon the health effects of EMF. The weak evidence that EMF may be a health risk is insufficient to require drastic regulatory action such as placing the upgraded transmission lines underground." Despite the extensive filing by the Waibels, we have not been presented with any new evidence that would lead us to revisit that earlier ruling.

### Queen City Park Neighborhood

#### Findings

70. Close by the Queen City Park neighborhood are: the existing VELCO 115 kV line; a GMP substation; Hannaford's shopping complex; and other commercial development. Exh. VT Transco-Post CPG-45.

71. VELCO proposes to replace the four existing H-frame structures south of the Queen City substation, from pole 344 to pole 347, with five new, single-pole, braced-post structures. In

addition, VELCO would move the location of existing pole 346 15 feet to the east and further away from residences on Maple Avenue. Exh. VT Transco-Post CPG-46; tr. 12/5/06 at 153 (Disorda); tr. 12/6/06 at 20 (Storo).

72. Changing the configuration of poles 344 to 347 from H-frame to single pole would reduce the width of the right-of-way clearing from 150 feet to 100 feet. This would result in less clearing to the east of the Queen City Park Neighborhood. Exh. VT Transco-Post CPG-46; tr. 12/5/06 at 142-143 (Disorda).

73. The Queen City Park neighborhood is currently well screened from the commercial development by vegetation on the eastern side of the railroad track. Tr. 12/5/06 at 50 (Vissering).

74. It is important to keep a vegetative screen between the neighborhood and the commercial area to the east to ensure that views of the Route 7 commercial development are not opened up during winter months. Tr. 12/5/06 at 32 (Hodgson), at 40 (Vissering), and at 189 (Raphael); exh. South Burlington Post-CPG 14.

75. From an aesthetics perspective, it would be preferable to combine the two transmission corridors in this area and utilize single-pole, double-circuit configuration to reduce the number of structures, visual clutter, and required clearing. Tr. 12/5/06 at 190 (Raphael).

76. VELCO utilizes single-pole, double-circuit construction elsewhere within its system, including the co-location of the New Haven to Queen City and the New Haven to Williston 115 kV lines, located south of the Queen City Tap within South Burlington. Tr. 12/5/06 at 166-167 (LaForest).

77. Implementing a single-pole, double-circuit design would increase outage exposure. Tr. 12/5/06 at 140-141 (LaForest); tr. 12/6/06 at 146 (Smith), 168-169 (Litkovitz).

78. Use of a single-pole, double-circuit configuration would require pole heights of between 90 and 100 feet, which could impact views from Lake Champlain. Tr. 12/6/06 at 22 (Storo); tr. 12/5/06 at 196-197 (Raphael).

79. A single-pole, double-circuit configuration would require VELCO to clear a larger right-of-way and manage vegetation more intensively due to greater reliability concerns. Tr. 12/5/06 at 144 (Disorda).

80. Clearing vegetation which buffers the Queen City Park neighborhood from commercial development along Route 7, combined with the visibility of the two 115 kV lines in this area would result in an undue adverse aesthetic impact. Exh. Queen City Park Post CPG-1.

### Discussion

South Burlington and the Queen City Park residents recommend that we require VELCO to construct this portion of the line using double-circuit, single-pole construction on the east side of the railroad track and cease use of the right-of-way on the west side of the tracks.<sup>51</sup> The Department and VELCO contend that the aesthetic advantages gained from such an action would be offset by the impact on reliability. Utilizing a single-pole, double-circuit design in this area would increase the possibility of outages along this portion of the line. VELCO and the Department further contend that the amount of load served by the NRP distinguish the use of single-pole, double-circuit design in this area.

VELCO contends that any "aesthetic benefit obtained through a single-pole, double-circuit configuration or underground construction is not warranted by the reduced reliability and the significant increase in cost associated with such a design."<sup>52</sup> The Department recommends that, rather than moving the existing line to the east of the railroad tracks, VELCO work to reduce clearing through the use of single pole rather than H-frame structures and the use of cabling rather than removal of danger trees outside the right-of-way.

We find that the clearing associated with the project will have an undue adverse impact on the Queen City Park residents. VELCO contends that it should not be responsible for mitigating the consequences of commercial growth along Route 7. We agree with that assertion but it is clear that upgrading the GMP 34.5 kV line would result in substantial clearing that would open up the view of the commercial development from the Queen City Park neighborhood. Accordingly, this project will directly impact the Queen City Park residents.

We accept the fact that requiring single-pole, double-circuit design increases exposure to outages. However, given VELCO's use of this design south of the Queen City substation, it is

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51. Tr. 12/5/06 at 8-10 (Furnari).

52. VELCO December 22, 2006, Brief at 13.

apparent that there are situations where the utilization of the design is reasonable. In this circumstance, the need to mitigate the undue adverse aesthetic impacts on the Queen City Park neighborhood make the single-pole, double-circuit design reasonable.

The use of single-pole, double-circuit poles in this area would increase pole heights and could have an aesthetic impact on the view from Lake Champlain. We must therefore balance the impacts on the Queen City Park neighborhood with the impacts on users of Lake Champlain.<sup>53</sup> In requiring VELCO to move the existing line to the east we are moving the line farther from the shore of Lake Champlain.

These factors lead us to conclude that requiring VELCO to utilize single-pole, double-circuit design in the vicinity of the Queen City substation constitutes reasonable aesthetic mitigation for the impact on the Queen City Park neighborhood.

As mitigation, we will require VELCO to work with the Queen City Park residents, the City of South Burlington, and the Department to develop plans for co-locating the two lines on the eastern side of the railroad track from the area near the Lowe's development to the Queen City substation. These plans should take into consideration both aesthetic and engineering impacts associated with this move.

#### Effect of Lowe's Land Use Permit

VELCO and Lowe's Home Centers, Inc. ("Lowe's") have requested that the Board clarify whether the terms and conditions of an existing Act 250 Land Use Permit impact the final construction and landscape plans for portions of the proposed 115 kV transmission line, and whether an amendment of the Act 250 permit is necessary.

On December 22, 2006, VELCO filed a brief requesting that the Board clarify whether the terms and conditions of an existing Act 250 Land Use Permit will impact the final construction and landscape plans for portions of the proposed 115 kV transmission line. Lowe's leases land ("Parcel") from Southland Enterprises, Inc. in South Burlington, through which the proposed 115 kV transmission line would pass, and which is subject to the Land Use Permit. The Land Use Permit authorizes, with conditions, the construction of a Lowe's Home Center

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53. Tr. 12/5/06 at 191-192 (Raphael).

store on the Parcel. One requirement of the Land Use Permit is that a wooded area on the Parcel not be cleared. That requirement may be inconsistent with the vegetation clearing on the parcel that would be associated with the proposed 115 kV transmission line.

In its December 22, 2006, brief, VELCO asserts that under 30 V.S.A. 248 ("Section 248") the Board has exclusive jurisdiction over transmission projects, such as the proposed 115 kV line. VELCO also argues that following the Vermont Environmental Court's decision in *Glebe Mt. Wind Energy, LLC*, Docket No. 234-11-05 Vtec (Aug. 3, 2006), it is clear that Act 250 jurisdiction does not apply to electric generation and transmission facilities that require a certificate of public good, regardless of whether they otherwise would trigger Act 250 jurisdiction. VELCO then requests the issuance of an Order stating that the Board has exclusive jurisdiction over the proposed 115 kV line and that no amendment to the Land Use Permit is necessary.

On December 21, 2006, the District #4 Coordinator, for the State of Vermont Natural Resources Board, issued a jurisdictional opinion in response to VELCO's request for clarification of the applicability of Act 250 jurisdiction to the transmission project. The jurisdictional opinion asserts that under *Glebe Mt. Wind*, Act 250 jurisdiction does not extend to the construction of electrical generation or transmission facilities requiring a certificate of public good pursuant to Section 248.<sup>54</sup>

On January 2, 2007, Lowe's filed a memorandum in response to VELCO's December 22, 2006, brief. In that memorandum, Lowe's expresses support for VELCO's request that any certificate of public good issued by the Board state that the project falls exclusively under the Board's jurisdiction. Lowe's further asserts that the Board possesses the authority to alter the existing Act 250 permit in the present situation, and requests that the Board abrogate any terms of the Land Use Permit that conflict with the terms of the certificate of public good.<sup>55</sup> In support

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54. The jurisdictional opinion does not address the issue of whether the Board possesses the authority to alter an existing Act 250 permit; nor does it appear that the District #4 Coordinator was requested to address that issue.

55. It appears that Lowe's was the first party to raise this issue of the Board's authority to modify the Act 250 permit. Lowe's January 2, 2007, memorandum expresses support for *VELCO's* request that the Board alter the existing Act 250 Land Use Permit. However, VELCO's brief does not raise that issue, going only so far as to request that the certificate of public good state that the Board possesses exclusive jurisdiction over the project.

of its position, Lowe's relies on the *Glebe Mt. Wind* case generally, but does not point to any specific discussion of that issue in the Court's decision.

On January 11, 2007, the Department submitted a reply brief responding to the arguments made by VELCO and Lowe's. The Department asserts that the Board has no statutory authority to construe the Act 250 jurisdiction of the District Commissions or to abrogate the terms of an Act 250 permit.

On January 12, 2007, The Voice of Potash Brook ("Voice") filed a letter addressing the Act 250 issues surrounding the project. The letter asks the Board to give due consideration to the time and money expended by the Voice in the Act 250 process. As a result of that effort, the Lowe's Act 250 permit required the preservation of the wooded buffer between Lowe's and the Queen's City Park neighborhood. The Voice requests that the Board require VELCO to comply with the requirements of the Act 250 permit.

On January 24, 2007, Lowe's filed a response to the Department's reply brief. Lowe's contends that if the Board defines the project as including the necessary abrogation of conditions within the Act 250 permit, it follows that the Board has jurisdiction to alter the Act 250 permit. However, Lowe's acknowledges that no case law exists addressing this issue, and instead delineates a number of policy considerations, which Lowe's argues weigh in favor of its position.

On January 31, 2007, the Department filed a reply to Lowe's January 24, 2007, response. The DPS reiterates its position that the Board lacks the authority to issue the requested rulings regarding Act 250 because no statute confers that authority upon the Board. Without statutory authorization, the Department contends, the Board cannot grant the relief Lowe's has requested.

We have reviewed the parties' submissions and the record in this proceeding, and conclude that the Board does not have the authority to rule on whether the project is exempt from Act 250 jurisdiction, nor the power to alter the terms of an Act 250 permit.

The parties have not pointed to any authority of this Board to rule on the applicability of a statute – Act 250 – that we do not administer. That statute is instead administered by the Natural Resources Board, which, through its District #4 Coordinator, has already ruled on this issue.<sup>56</sup>

Similarly, alteration of the conditions of the Land Use Permit is not within the power of this Board. The Board, as a quasi-judicial body, only possesses the power to take actions which are authorized by statute.<sup>57</sup> No party has identified any statutory provision authorizing the Board to alter the terms of an Act 250 permit. Lowe's advances a number of policy considerations, which it argues weigh in favor of a conclusion that the Board is authorized to alter Act 250 permits. However, the legislature has given authority to issue and amend Act 250 permits to the Natural Resources Board, not to the Public Service Board.<sup>58</sup> The Department is correct in its assertion that the Environmental Court, in *Glebe Mt. Wind*, did not rule that the Board has the authority to alter Act 250 permits. As the Department states, in *Glebe Mt. Wind* the Environmental Court construed the jurisdiction of Act 250, not of Section 248. There is no basis, statutory or under *Glebe Mt. Wind*, for Lowe's assertion that the Board has been authorized to alter the terms of an Act 250 permit. That authority rests with the Natural Resources Board.

### **XIII. Potential Modifications Related to Acquisition of Property Rights**

VELCO has filed a number of condemnation petitions related to property rights that it represents are necessary for construction of this project. It is possible that one or more of the petitions might be settled through negotiations between VELCO and the property owner, with the settlement requiring a modification to VELCO's current plans.<sup>59</sup> We neither wish nor intend today's Order to preclude such settlements. Instead, we encourage VELCO to work cooperatively with property owners to seek to resolve any such disagreements. In order that the property owner may have a fair opportunity to work with VELCO to resolve concerns over the location of the

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56. Even if there were some basis to believe that the Public Service Board could issue a ruling on the scope of Act 250 jurisdiction, we would be extremely reluctant to do so when a ruling on the identical question has already issued from a tribunal with clear authority to so rule.

57. *Trybulski v. B.F. Hydro-elec. Corp.*, 112 Vt. 1, 7 (1941).

58. 10 V.S.A. Chapters 151, 201, 220.

59. For example, the property owner may seek to have a particular pole relocated to a less-objectionable location on the property.



proposed transmission facilities, we hereby withhold approval of final construction and mitigation plans for any location for which VELCO does not yet possess all necessary property rights. If VELCO and a property owner agree to a design modification, VELCO should file the proposed modification with the Board for approval; VELCO must also provide copies of the proposed modification to parties, affected property owners, and the municipality in which the property is located. We will provide a two-week comment period before determining whether to approve the modified plans for that property.<sup>60</sup>

#### **XIV. Conclusion**

For the reasons set forth above, we approve VELCO's final design plans for the 115 kV line, subject to the exclusions and conditions set forth in the Order, below.

#### **XV. Order**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. VELCO's final design plans and plans for aesthetic and environmental mitigation filed on September 1, 2006, are approved, subject to the exceptions and conditions set forth below.
2. VELCO's plans for the vicinity of the South Middlebrook Road crossing in Ferrisburgh and for the Meach Cove property in Shelburne are not approved at this time.
3. VELCO must demarcate the trees that it intends to clear at the following locations: Lime Kiln Road (sheet L2.2); South Middlebrook Road (sheet L3.1); Monkton Road/Reed Road (sheet L3.2); Route 22A (sheet L4.1); Bostwick Road (sheet L7.1); Meach Cove (sheet L7.2a); Old Orchard Park (sheet L8.3); and the area in the vicinity of and south of the Queen City substation. VELCO must file the demarcation with the Board and provide copies to parties, involved municipalities, and affected property owners. Parties, municipalities, and affected property owners may file comments and request a site visit regarding VELCO's proposed clearing in these areas; any such comments and requests must be filed within two weeks of the

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60. This same process shall apply for proposed modifications that result from VELCO's negotiations with a property owner when no condemnation petition has been filed.

date that VELCO files the demarcation with the Board. VELCO may not clear trees in these areas until the Board has approved the proposed clearing.

4. VELCO must include in its plans the underground placement of distribution lines in the following locations: Lime Kiln Road in New Haven; Plank Road in New Haven; Tupper's Crossing in Ferrisburgh; Route 7 in Ferrisburgh (underground placement of a Verizon line); Monkton Road in Ferrisburgh; Reed Road in Ferrisburgh; Little Chicago Road in Ferrisburgh; Town Line Road in Charlotte, including the relocation of the line serving the Muggenthaler property to allow a reduction in the heights of additional poles; and Harbor Road in Shelburne.

5. VELCO must submit revised mitigation plans to the Board for approval for locations where a property owner, a municipality or the state denies permission for any of VELCO's proposed off-corridor mitigation plantings. Parties, municipalities, and affected property owners may file comments on the revised mitigation plans; any such comments must be filed within two weeks of the date that VELCO files the revised mitigation plans with the Board.

6. VELCO must assess, prior to construction in the relevant areas, whether any of its proposed plantings are within the site triangles provided by the Vermont Agency of Transportation relative to the railroad and, if so, to propose revised mitigation plans to the Board, for approval, with copies to parties, affected municipalities, and affected property owners. Parties, municipalities, and affected property owners may file comments on the revised plans; any such comments must be filed within two weeks of the date that VELCO files the revised plans with the Board.

7. At Plank Road in New Haven, VELCO must retain the existing rows of trees along Plank Road, and must relocate the proposed willow trees closer to the road. The Board retains jurisdiction to require additional aesthetic mitigation if, following construction, the Board determines that the screening is not effective.

8. At Monkton Road and Reed Road in Ferrisburgh, VELCO must retain the existing vegetation, as noted in finding 29, above.

9. At Thompson's Point Road in Charlotte, VELCO must retain the existing plantings west of the railroad tracks.

10. At the Slang in Ferrisburgh, VELCO must substitute native species for its proposed willow and Washington hawthorn.

11. In the vicinity of and at the crossing of North Greenbush Road in Charlotte, VELCO shall employ shorter spans where possible to reduce pole heights, and shall place the existing distribution lines in this area underground. VELCO must also make good-faith efforts to work with the Town of Charlotte in an attempt to address the safety concerns that have been raised by the Town's road commissioner. VELCO must prepare revised final design and landscape mitigation plans to reflect these modifications. Parties, municipalities, and affected property owners may file comments on the revised plans; any such comments must be filed within two weeks of the date that VELCO files the revised plans with the Board.

12. VELCO must submit a final mitigation plan for the LaPlatte River for approval by the Board. Parties, municipalities, and affected property owners may file comments on VELCO's final mitigation plan for the LaPlatte River; any such comments must be filed within two weeks of the date that VELCO files the final mitigation plan.

13. Parties, municipalities, and affected property owners may file comments on VELCO's revised landscape mitigation plans for Route 17 and Lime Kiln Road in New Haven, which VELCO filed on April 10, 2007, and on VELCO's revised landscape mitigation plans for several road crossings, which VELCO filed on April 16, 2007. Any such comments shall be filed by July 9, 2007.

14. VELCO must install the plantings proposed on the western side of Route 22A in Vergennes, in front of the automobile dealership, if the automobile dealership so requests.

15. VELCO must submit revised construction and landscape mitigation plans for the 115 kV line in the area of Blodgett Field in the Town of Shelburne. The revised plans shall conform with the plans filed by VELCO on September 1, 2006, with the modifications shown on VELCO's plans dated December 12, 2006 (exh. VT Transco-Post-CPG-67) and the proposed pole location modifications described in VELCO's January 17, 2007, filing.

16. If, in the course of negotiations with a property owner to acquire property rights necessary for construction of the project, VELCO and the property owner agree to a design modification, VELCO must file the proposed modification with the Board for approval, and also

provide copies of the proposed modification to parties, affected property owners, and the municipality in which the property is located. Parties, municipalities, and affected property owners may file comments on VELCO's proposed modification; any such comments must be filed within two weeks of the date that VELCO files the proposed modification.

17. With respect to the Meach Cove property, VELCO shall, in consultation with the other involved parties, explore further the potential of locating the line in (or near) the McCabe's Brook wetland. No later than August 15, 2007, VELCO shall submit a report on the feasibility of a McCabe's Brook location; VELCO's report must also include the names and addresses of the owners of any newly affected properties. No later than August 29, 2007, parties, municipalities, and affected property owners may file comments on VELCO's report and, if any party so wishes, a showing that an additional hearing should be conveyed to address the feasibility of a McCabe's Brook location.

18. VELCO must work with the involved parties to attempt to reach agreement on a revised design to eliminate the acute angle at pole 297C in the Meach Cove property as shown on VELCO's November 29, 2006, plans. VELCO's revised design must also reflect the following mitigation measures:

- (a) VELCO must make all reasonable efforts to retain existing vegetation in the Meach Cove property;
- (b) at Bostwick Road, poles 271 through 274 must be relocated to the west to save the existing tree line as an intact background element for the poles; and
- (c) near Harbor Crossing, VELCO must make all reasonable efforts to minimize the width of the cut going uphill (back towards the Meach Cove property).

No later than August 15, 2007, VELCO must file its revised design with the Board for approval, and also provide copies of the revised design to the involved parties. No later than August 29, 2007, parties may file comments on VELCO's revised design and, if any party so wishes, a showing that an additional hearing should be conveyed to address the revised design.

Dated at Montpelier, Vermont, this 25th day of June, 2007.

_____	)	
	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

FILED: June 25, 2007

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*